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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,403	03/12/2004	Frank Boyer	BOYER-PA-1	7143
7590		06/29/2009	EXAMINER	
OBERIKALER			JOHNSON, STEPHEN	
C/O ROYAL W CRAIG			ART UNIT	PAPER NUMBER
120 EAST BALTIMORE STREET			3641	
BALTIMORE, MD 21202				

  

MAIL DATE	DELIVERY MODE
06/29/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* FRANK BOYER

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Application 10/800403  
Technology Center 3600

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Mailed: June 29, 2009

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Before DALE M. SHAW *Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL

This application was electronically received by the Board of Patent Appeals and Interferences on July 09, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

**APPEAL BRIEF, APPEALED CLAIMS**

Appellant has not appealed all rejected claims. Specifically, a review of the Grounds of Rejection on the record finds that rejections are outstanding for the following pending claims: 1 and 3-9. The rejected claims that have not been appealed and/or argued for appeal are claims 1 and 4-9.

**DISCUSSION**

The Board of Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand (or return) the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8<sup>th</sup> ed. Rev. 6, Sept 2007).

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) to either enter a paper or have the appellant enter a paper canceling claims 1 and 4-8 and rewriting claim 3 in independent form;
- 2) upon entry of the paper, to return the application to the Board for the consideration of appealed claims; and
- 3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

dms/jgr

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